

CHAPTER 1942
of the Statutes of 1961
(As Amended April 2, 1970,
and April 26, 1973)

REPLENISHMENT ASSESSMENT ACT
of the
ALAMEDA COUNTY WATER DISTRICT

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SECTION 1. The following definitions apply to the words used in this act:

(a) "District" means the Alameda County Water District (organized pursuant to the County Water District Law, commencing with Section 30000 of the Water Code).

(b) "Water year" means the period commencing on July 1st of one calendar year and ending on June 30th of the calendar year immediately following.

(c) "Groundwater" means the water beneath the surface of the ground, whether or not flowing through known and definite channels.

(d) "Nonsaline water" means water, the salinity of which does not exceed the tolerance generally accepted within the District for salinity of water used for domestic or agricultural purposes therein.

(e) "Production" or "producing" means the extraction or extracting of groundwater, by pumping or any other method from shafts, tunnels, wells, excavations, or other sources of groundwater for domestic, municipal, irrigation, industrial or other beneficial use, except that such terms shall not mean or include the extraction or extracting of groundwater incidentally produced with oil in the production of oil or gas, nor the extraction or extracting of groundwater incidentally produced in a bona fide mining operation or construction of a tunnel or railroad, highway, aqueduct, pipeline, or other useful purpose unless the groundwater so extracted shall be used or sold by the producer for domestic, municipal, irrigation, industrial, or other beneficial purpose, nor the extraction or extracting of groundwater used in the production and processing of sand and gravel or other industrial processes to the extent that such water is returned to the groundwater basin. The return of such water to the groundwater basin shall be accomplished by the quarry operator or industrial user in a privately owned facility specifically for such purpose. The quarry operator or industrial user shall be responsible for metering the quantity of such return water after it has been clarified to a turbidity of not greater than 100 Jackson candle units and for proof that the quality of the water so returned has not been otherwise degraded.

(f) "Water-producing facility" means any device or method, mechanical or otherwise, for the production of groundwater from the groundwater supplies within the District.

(g) "Owner" means the person or persons owning any water-producing facility or any interest therein other than a lien to secure the payment of a debt or other obligation.

(h) "Operator" means the person or persons operating a water-producing facility; the owner thereof shall be conclusively presumed to be such operator unless satisfactory showing be made to the Board of Directors of the District that such water-producing facility actually is operated by some other person or persons.

(i) "Producer" means any operator producing groundwater.

(j) "Annual overdraft" means the amount, as determined by the Board of Directors of the District, by which the quantity of groundwater removed by any natural or artificial means from the groundwater supplies within the District during the water year exceeds the quantity of nonsaline water replaced therein by the replenishment of such groundwater supplies in such water year by any natural or artificial means other than replenishment under the provisions of this act.

(k) "Accumulated overdraft" as used in this act means the amount of water necessary to be replaced in the intake area of the groundwater basin within said District to prevent the landward movement of ocean water into the fresh groundwater body, as determined by the Board of Directors from time to time.

(l) "Existing agency" means any public corporation, agency, district, or political subdivision, now or hereafter created, which has any of the powers granted the Alameda County Water District by this act.

(m) "Agricultural water" means water first used on lands in the production of plants, crops, or livestock for market.

(n) "Recreational water" means water first used on municipally owned and operated lands for parks or recreational purposes.

SECTION 2. The District may do any act necessary to replenish the groundwater of the District or to prevent saltwater intrusion into the groundwaters of the District, including any of the following:

(a) Buy and sell water.

(b) Exchange water.

(c) Distribute water to persons in exchange for ceasing or reducing groundwater extractions.

(d) Spread, sink, and inject water into the underground.

(e) Store, transport, recapture, reclaim, purify, treat, or otherwise manage and control water for the beneficial use of persons or property in the District.

(f) Build the necessary works to achieve groundwater replenishment or the prevention of saltwater intrusion.

(g) Put to beneficial use any water subject to the control or management of the District.

SECTION 3. The District may take any action necessary to protect or prevent interference with the water, the quality of water, or the water rights of persons or property within the District, subject to the limitations contained in Section 4.

SECTION 4. For the purposes of replenishing the groundwater supplies in the District and of preventing the intrusion of saltwater into such supplies, the District shall have, in addition to its powers under the County Water District Law (commencing with Section 30000 of the Water Code), the following powers:

(a) Within or outside of the District to construct, purchase, lease or otherwise acquire, and to operate and maintain necessary waterworks and other works, machinery and facilities, canals, conduits, waters, water rights, spreading grounds, lands, rights and privileges useful or necessary to replenish the underground water basin in the District, to augment the common water supplies of the District or to prevent saltwater intrusion into the groundwaters of the District.

(b) For the common benefit of the District, to store water in underground water basins or reservoirs in, or outside of, the District, to appropriate and acquire water and water rights in, or outside of, the District, to import water into the District, and to conserve water in, or outside of, the District.

(c) To carry out the purposes of this act, to commence, maintain, intervene in, defend and compromise, in the name of the District, or otherwise, and to assume the costs and expenses of any and all actions and proceedings now or hereafter begun to prevent interference with water or water rights used or useful to lands within the District, or diminution of the quantity, pollution, or contamination of the water supply of the District, or to prevent unlawful exportation of water from the District, or to prevent any interference with the water or water rights used or useful in the District which may endanger or damage the inhabitants, lands, or use of water in the District; provided, however, that the District shall not have the power to intervene or take part in, or to pay costs or expenses of actions or controversies between the owners of land or water rights all of which are entirely within the boundaries of the District, unless such action is one to adjudicate all or substantially all of the rights to use or extract groundwater within the District.

(d) To have and exercise the right of eminent domain and in the manner provided by law for the condemnation of private property for public use, to take any property necessary to supply the District, or any portion thereof, with replenishment water, except (a) water and water rights already devoted to beneficial use, and (b) property (other than water and water rights) already appropriated to public use unless the taking be for a more necessary public use than that to which the property is already appropriated; provided, the District in exercising such power shall, in addition to the damage for taking, injuring, or destruction of property, also pay the cost of removal, reconstruction, or relocation of any structure, including railways, mains, pipes, conduits, wires, cables, towers, or poles of any public utility which is required to be removed to a new location. No use by the District of property owned, at the time the action to condemn is brought, by an existing

agency having powers to provide for the replenishment of groundwaters, shall constitute a more necessary public use than the use to which the property is already appropriated. In proceedings relative to the exercise of such right, the District shall have all of the rights, powers, and privileges of a city. No action in eminent domain to acquire property or interests therein outside the boundaries of the County of Alameda shall be commenced unless the Board of Supervisors of each affected county has consented to such acquisition by resolution.

(e) To act jointly with or cooperate with the United States or any agency thereof, and, under the applicable laws of this State, cooperate and act jointly with the State of California, or any county or agency thereof, or any political subdivision or district therein, including flood control districts, public and private corporations, and any person, to the end that the purposes and activities of the District may be fully and economically performed.

(f) To cause assessments and charges to be levied as hereinafter provided.

(g) To carry on technical and other investigations of all kinds, necessary to carry out the provisions of this act, and for this purpose the District shall have the right of access through its authorized representative to all properties within the District.

(h) To fix the rates at which water shall be sold for replenishment purposes, and to establish different rates for different classes of service or conditions of service, provided that the rates shall be uniform for like classes and conditions of service.

(i) To fix the terms and conditions of any contract under which producers may agree voluntarily to use replenishment water from a nontributary source in lieu of groundwater, and to such end a District may become a party to such contract and pay from District funds such portion of the cost of replenishment waters as will encourage the purchase and use of such water in lieu of pumping so long as the persons or property within the District are directly or indirectly benefited by the resulting replenishment.

SECTION 5. The powers and duties herein enumerated shall, except as herein otherwise expressly provided, be exercised and performed by the Board of the District. In the event an existing agency has facilities available and adequate to accomplish any part of the purposes of the District, the District shall investigate and determine the cost of contracting for the accomplishment of such purpose through such existing agency. Thereupon, the Board shall make a finding as to whether or not the purpose proposed to be accomplished by the District can be achieved more economically and for the best interests of the area to be benefited by entering into such a contract with an existing agency. If the Board finds that such contract is more economical and for the best interests of the area to be benefited, it shall so contract for the accomplishment of said purpose, if such agency so agrees. The purpose of this section is to avoid duplication of similar operations by existing agencies and replenishment districts.

SECTION 6. The Board shall fix such rate or rates for the sale or exchange of water for replenishment purposes as will result in revenues which

will pay, insofar as practicable, the operating expenses of the District which are attributable to providing such water. The rate charged shall be uniform for like classes and conditions of service.

SECTION 7. Not later than the second Tuesday in February of each year the Board shall order an engineering survey and report to be made regarding the groundwater supplies of the District and the extent of saltwater intrusion therein. The report shall include the following:

(a) Records, data, and other information for the consideration of the Board in its determination of the annual overdraft, the accumulated overdraft as of the last day of the preceding water year, and the extent of saltwater intrusion in the District.

(b) A report, with supporting data, as to the total production of groundwater from the groundwater supplies within the District during the preceding water year and as to the changes during the preceding water year in the pressure levels or piezometric heights of the groundwater contained within pressure-level areas of the District, and as to the effects thereof upon the groundwater supplies within the District.

(c) An estimate of the annual overdraft for the current and the ensuing water years, of the accumulated overdraft as of the last day of the current water year, of the total production of groundwater from the groundwater supplies within the District for the current and ensuing water years, and of the changes during the current water year in the pressure levels or piezometric heights of the groundwater contained in pressure-level areas of the District and the effects upon the groundwater supplies in the District.

(d) An estimate of the quantity, source, and cost of water available for replenishment of the groundwater supplies during the ensuing water years.

(e) A recommendation as to the quantity of water which should be purchased for replenishment of the groundwater supplies within the District during the ensuing water year.

(f) An estimate of the costs of replenishing the groundwater supplies with purchased water and of the rate of the replenishment assessment required to be levied upon the production of groundwater from the groundwater supplies within the District during the ensuing fiscal year for the purpose of accomplishing such replenishment.

SECTION 8. On or before the second Tuesday in March of each year, and provided the survey and report required by Section 7 has been made, the Board, by resolution, shall declare whether funds shall be raised to purchase water for replenishment during the ensuing fiscal year and whether such funds or any portion thereof shall be raised either by (a) a water charge, (b) a replenishment assessment, or (c) a combination of water charges and replenishment assessments, and whether the funds so to be raised will benefit, directly or indirectly, all of the persons or real property and improvements within the District.

SECTION 9. If the Board, by resolution, determines that all or a portion of the funds needed to purchase replenishment water shall be raised by the

levy of a replenishment assessment, then the Board shall immediately publish a notice that a public hearing will be held on the second Tuesday of April for the purpose of determining whether and to what extent the estimated cost of purchasing water for replenishment for the ensuing year shall be paid for by a replenishment assessment. Such notice shall invite inspection of the engineering survey and report upon which the Board acted, a copy of said Board's resolution, the time and place of said hearing, and an invitation to all interested parties to attend and be heard in support of or opposition to said proposed assessment, the engineering survey and report, and the Board's determination. The notice shall be published in the county pursuant to Section 6061 of the Government Code, at least 10 days before the hearing date.

Said hearing shall be held before the Board and a quorum shall be present. The hearing may be adjourned from time to time by the president or presiding officer or hearing officer but shall be completed by the first Tuesday in May next following.

The Board may appoint a qualified registered engineer familiar with water problems as a hearing officer to conduct said hearing.

All evidence relevant to the engineering survey and report and the Board's determination that such a replenishment assessment shall be levied may be introduced.

SECTION 10. Upon completing said hearing, but no later than the second Tuesday in May, the Board shall, by resolution, find:

- (a) The annual overdraft for the preceding water year;
- (b) The estimated annual overdraft for the current water year;
- (c) The estimated annual overdraft for the ensuing water year;
- (d) The accumulated overdraft as of the last day of the preceding water year;
- (e) The estimated accumulated overdraft as of the last day of the current water year;
- (f) The total production of groundwater from the groundwater supplies within the District during the preceding water year;
- (g) The estimated total production of groundwater from the groundwater supplies within the District for the current water year;
- (h) The estimated total production of groundwater from the groundwater supplies within the District for the ensuing water year;
- (i) The changes during the preceding water year in the pressure levels or piezometric heights of the groundwater contained within pressure-level areas of the District, and the effects thereof upon the groundwater supplies within such District.

(j) The estimated changes during the current water year in the pressure levels or piezometric heights of the groundwater contained within pressure-level areas of the District and the estimated effects thereof upon the groundwater supplies within such District;

(k) The quantity of water which should be purchased for the replenishment of the groundwater supplies of the District during the ensuing water year;

(l) The source and estimated cost of water available for such replenishment;

(m) The estimated costs of replenishing such groundwater supplies with such water so purchased;

(n) The estimated rate of the replenishment assessment required to be levied upon the production of groundwater from the groundwater supplies within the District during the ensuing fiscal year for the purpose of accomplishing such replenishment.

SECTION 11. Based on the findings at the hearing the Board shall, by resolution, determine what portion, if any, of the estimated cost of purchasing water for replenishment for the ensuing fiscal year shall be paid for by a replenishment assessment.

If the Board determines that a replenishment assessment should be levied upon the production of groundwater from groundwater supplies within the District during the ensuing fiscal year, then immediately following the making of such determination said Board shall levy a replenishment assessment on the production of groundwater from the groundwater supplies within the District during the fiscal year commencing on July 1st next, and such replenishment assessment shall be computed at a fixed and uniform rate per acre-foot of agricultural or recreational water up to a maximum of eight dollars (\$8) per acre-foot, and at a fixed and uniform rate per acre-foot of all water other than agricultural or recreational water. The producers of such groundwater shall pay such replenishment assessment to the District at the times and in the manner hereinafter in this act provided.

SECTION 12. The District, after the levying of the replenishment assessment, shall give notice thereof to the operators of all water-producing facilities in the District as disclosed by the records of such District, which notice shall state the rate of replenishment assessment for each acre-foot of groundwater to be produced during the ensuing fiscal year. The notice may be sent by postal card or by other first-class mail with postage prepaid by the District.

SECTION 13. Within ninety (90) days after the adoption of the resolution of the Board provided in Section 8, the operator of each water-producing facility within such District shall file with it an information groundwater production statement. Such statement shall contain, in addition to such other information as the District may require, an estimate of the total production of groundwater from such water-producing facility for the preceding water year, an estimate of the production of groundwater from such water-producing facility for the current water year, an estimate of the production

of groundwater from such water-producing facility for the ensuing water year, and information as to the method or basis of making such estimates.

Thereafter, the operator of each water-producing facility within the District, on or before the last day of the month immediately following the respective quarterly periods ending March 31st, June 30th, September 30th, and December 31st of each year, shall file with the District a sworn statement setting forth the total production in acre-feet of groundwater from such water-producing facility during the respective quarterly periods immediately preceding the filing of the respective statements, a general description or number locating such water-producing facility, and the method or basis of the computation of such groundwater production. Each statement also shall contain such other information as the District may require. The first such statement required to be filed pursuant to the provisions of this section shall cover the first calendar quarter commencing not less than thirty (30) days after the adoption of the resolution of the Board provided in Section 8.

SECTION 14. Any replenishment assessment levied pursuant to this act shall be due and payable to the District by each producer in quarterly installments on the last day for filing the statement of the production of groundwater from the water-producing facility operated by such producer during the quarterly period required to be covered by such statement. The amount so due and payable shall be computed by multiplying the production in acre-feet of groundwater so produced from such water-producing facility, as reported in such statement, by the rate of the replenishment assessment fixed and levied by the Board of the District for the fiscal year in which such production shall occur.

SECTION 15. If any producer shall fail to pay a replenishment assessment when due, the Board of the District may charge interest at a rate not to exceed 1 percent per month on the delinquent amount of the assessment.

Should any operator of a water-producing facility fail to register his water-producing facility or fail to file the groundwater production statement, the District, in addition to charging interest as provided above, may assess a penalty charge against such operator in an amount not to exceed 10 percent of the amount of the replenishment assessment found by the District to be due with respect to the production of groundwater from such water-producing facility.

SECTION 16. The Board, at the time of fixing the replenishment assessment rate, may provide by resolution that any producer operating a water-producing facility having a discharge opening not greater than two inches in diameter and providing groundwater for domestic or irrigation uses on an area not exceeding one acre in extent, shall pay the amount fixed in such resolution as the replenishment assessment to be paid by such producer. No sworn statement as to the production of groundwater from such water-producing facility need be filed.

Upon good cause shown, an amended statement of groundwater production may be filed or a correction of the records may be made at any time prior to the final date for filing the next quarterly groundwater production statement.

SECTION 17. The Superior Court of the County of Alameda may issue a temporary restraining order upon the filing by the District with the court of a verified petition or complaint setting forth that the person named therein as defendant is the operator of a water-producing facility which has not been registered with the District or that such defendant is delinquent in the payment of a replenishment assessment. Such temporary restraining order shall be returnable to the court on or before ten (10) days after its issuance.

The court may issue and grant an injunction restraining and prohibiting the named defendant from the operation of any water-producing facility when it is established by the preponderance of the evidence at a hearing that the defendant has failed to register such water-producing facility with the District or that the defendant is delinquent in the payment of a replenishment assessment. Such court may provide that the injunction so made and issued shall be stayed for a period not to exceed ten (10) days to permit the defendant to register the water-producing facility or to pay the delinquent replenishment assessment.

Service of process shall be made by posting a copy of the summons and complaint upon the water-producing facility or the parcel of land upon which such water-producing facility is located and by personal service of such summons and complaint upon the named defendant.

The right to proceed for injunctive relief as provided herein shall be in addition to any other right which may be provided elsewhere in this act or which may be otherwise allowed by law. The procedure provided in Chapter 3 (commencing with Section 525), Title 7, Part 2 of the Code of Civil Procedure regarding injunctions shall be followed except insofar as it may be otherwise provided herein. The District shall not be required to furnish an undertaking or bond as a condition to the granting of injunctive relief.

SECTION 18. If the Board of the District shall have probable cause to believe that the production of groundwater from any water-producing facility is in excess of that disclosed by the sworn statements covering such water-producing facility, or if no statements are filed covering a water-producing facility, the Board of the District may cause an investigation and report to be made concerning the production of groundwater from such water-producing facility. The Board of the District may fix the amount of groundwater production from any such water-producing facility at an amount not to exceed the maximum production capacity of such water-producing facility; provided, however, where a water-measuring device is permanently attached thereto, the record of production as disclosed by such water-measuring device shall be presumed to be accurate and the burden is upon the District to establish to the contrary.

After such determination has been made by the Board of the District, a written notice thereof shall be mailed to the operator of such water-producing facility at his address as shown by the District's records. Any such determination made by the District shall be conclusive on the operator, and on any producer producing water from such water-producing facility, and the replenishment assessment based thereon, together with interest and penalties, shall be payable forthwith, unless such operator or producer shall file with the Board of Directors of the District within ten (10) days after the mailing

of such notice a written protest setting forth the ground or grounds for protesting the amount of production so fixed or the replenishment assessment, interest, and penalties so levied thereon. Upon the filing of such protest, said Board shall hold a hearing at which time the total amount of the groundwater production and the replenishment assessment thereon shall be determined, and the interest and penalties fixed, which action shall be conclusive if based upon substantial evidence. A notice of such hearing shall be mailed to protestant at least 10 days before the date fixed for the hearing. Notice of the determination by the Board shall be mailed to each protestant. The producer shall have 20 days from the date of mailing of such notice to pay the replenishment assessment, interest and penalties so fixed by the Board.

SECTION 19. The District may bring a suit in the court having jurisdiction against any producer of groundwater from the groundwater supplies within the District for the collection of any delinquent replenishment assessment. The court having jurisdiction of the suit may, in addition to allowing recovery of costs to the District as allowed by law, fix and allow as part of the judgment, interest and penalties as provided in Section 15. Should the District seek an attachment against the property of any named defendant therein, the District shall not be required to furnish bond or other undertaking as provided in Chapter 4 (commencing with Section 537), Title 7, Part 2 of the Code of Civil Procedure.

SECTION 20. It shall be unlawful to produce groundwater from any water-producing facility within the District from and after one year following the adoption of the resolution provided for in Section 8 hereof, unless such water-producing facility shall have a water-measuring device affixed thereto capable of registering the accumulated amount of groundwater produced therefrom.

The Board by resolution may extend such date on a year-to-year basis upon its determination that availability, price of water-measuring devices, or other circumstances justify such extension. Should the date be extended, notice thereof shall be given by publication in a newspaper of general circulation in the District once a week for two successive weeks, such publication to be completed not less than two months prior to the date so extended.

This section shall not be applicable to any operator of a water-producing facility having a discharge opening two inches or less in diameter and providing groundwater for domestic or irrigation uses on an area not exceeding one acre in extent, who is required to pay a replenishment assessment in an amount fixed by resolution of the Board of the District as hereinabove in this act provided.

Violation of this section shall be punishable by a fine not to exceed five hundred dollars (\$500), or by imprisonment in the county jail for not to exceed six (6) months, or by both such fine and imprisonment. Each day of operation of a water-producing facility in violation hereof shall constitute a separate offense.

SECTION 21. In the event of an adjudication of all or substantially all of the rights to extract groundwater and a determination of the natural safe yield of the groundwater supplies within the District, and a determination of the amount or extent to which the rights to extract groundwater so adjudicat-

ed may be exercised without exceeding the natural safe yield of such groundwater supplies, the Board of the District shall recognize such judicial determination by exempting from replenishment assessments the amount of water pumped by each person whose rights have been so adjudicated which does not exceed his proportionate share of the natural safe yield of the groundwater supplies of the District, as so adjudicated from time to time by the court having jurisdiction over such adjudication proceeding. The replenishment assessment shall thenceforth be levied on each producer by multiplying the production in acre-feet of groundwater so produced by such producer's water-producing facility in excess of his said adjudicated share of the natural safe yield by the rate of the replenishment assessment fixed and levied by the Board for the fiscal year in which such production shall occur.

To the extent that groundwater supplies are replenished under this act no person shall acquire any property or other right in the waters distributed by the District for replenishment purposes.

To the extent that the replenishment assessment after adjudication hereunder shifts from all producers to those who extract water in excess of their respective shares of the natural safe yield of the groundwater supplies within the District as so adjudicated, such replenishment assessment shall be deemed to benefit those persons who continue to pump and extract groundwater in excess of their adjudicated shares of the natural safe yield. Inasmuch as such persons must buy supplemental water or be in contempt of the court's order limiting their extraction of groundwater, they shall be deemed to benefit by the payment of a replenishment assessment which is used to purchase water to supplement the natural supplies of groundwater available for use.

SECTION 22. It is hereby declared to be necessary to enact the special law contained in this act with respect to the Alameda County Water District because of the following special facts and circumstances existing therein: That the quantity of groundwater removed by natural and artificial means from the groundwater supplies within the District during the preceding water years has exceeded the quantity of nonsaline water replaced therein by the replenishment of such groundwater for the aforesaid period by any natural or artificial means, and that as a result thereof, saline waters have intruded the groundwater supplies within the District and that replenishment assessments levied pursuant to this act, and in furtherance of the District's activities in the protection of the water supplies for users within the District are necessary for the public health, welfare and safety of the people of this State.